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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

WATERWATCH OF OREGON,

Plaintiff,

v.

**U.S. BUREAU OF RECLAMATION,
CENTRAL OREGON IRRIGATION
DISTRICT, NORTH UNIT IRRIGATION
DISTRICT, and TUMALO IRRIGATION
DISTRICT,**

Defendants.

Case No. _____

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF - 1

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INTRODUCTION

1. This citizen suit, brought under the Endangered Species Act (“ESA”), 16 U.S.C. §1540(g), seeks to enjoin the United States Bureau of Reclamation (“BOR”), the Central Oregon Irrigation District (“COID”), the North Unit Irrigation District (“NUID”), and the Tumalo Irrigation District (“TID”) (collectively “Defendants”) to provide adequate flows in the Upper Deschutes River Basin, Oregon, including tributaries in Crescent Creek and the Little Deschutes River, to ensure that threatened Oregon spotted frogs are not harmed.

2. The operations of the Crane Prairie, Wickiup and Crescent Lake Dams on the Upper Deschutes River and Crescent Creek are causing take of Oregon spotted frogs (“spotted frogs”), which are listed as threatened under the ESA, in violation of Sections 4(d) and 9 of the ESA, 16 U.S.C. §1533(d) and 1538(a)(1)(B). The operations of the dams are causing take of spotted frogs by altering natural flows in the Upper Deschutes Basin (including Crescent Creek) such that artificially high flows occur in the months between approximately May and September and artificially low flows occur from October to approximately April each year. The altered flows harm spotted frogs by inundating habitat and spawning areas and by dewatering habitat and spawning areas at times and at flow levels that are harmful to various frog life stages, leaving eggs and juveniles stranded in too much or too little water and/or desiccated, and leaving adults and juveniles exposed to winter freezing.

3. This suit also seeks declaratory and injunctive relief to compel consultation by the BOR under 16 U.S.C. § 1536(a)(2) of the ESA, as continued operation of the dams described above is likely to jeopardize spotted frogs.

4. The Crane Prairie and Wickiup Dams are owned by BOR and maintained and operated by BOR and/or COID and NUID.

5. The Crescent Lake Dam is currently owned by TID and maintained and operated by TID.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to the ESA citizen suit provision, 16 U.S.C. § 1540(g).

2. As required by 16 U.S.C. § 1540(g)(2)(A)(i), Plaintiff WaterWatch of Oregon provided the Defendants notice of the violations described in this complaint by letter dated August 12, 2015. Plaintiff sent the notice to each of the Defendants by regular U.S. mail, by certified U.S. mail return receipt requested, and by electronic courtesy copy to counsel for the irrigation districts and BOR. More than 60 days have passed since Defendants received the Notice and Defendants have not changed practices to protect frogs.

3. Venue in this district and division is proper under 16 U.S.C. § 1540(g)(3)(A), 28 U.S.C. § 1391, and Local Rule 3-2 because almost all of the Upper Deschutes River Basin at issue and all of the irrigation districts are located in Deschutes County, Oregon in this district and division. A small segment of the basin that includes Crescent Lake is in Klamath County, Oregon.

PARTIES

1. WaterWatch of Oregon (“WaterWatch”) is a non-profit conservation organization dedicated since 1985 to the protection and restoration of adequate and unimpaired flows in Oregon’s rivers and streams in order to sustain native fish, wildlife, and aquatic ecosystems as well as the people and communities who depend on healthy rivers. WaterWatch is incorporated and has its headquarters in the State of Oregon. WaterWatch has worked for decades in the Upper Deschutes River Basin to restore salmon, steelhead and bull trout, and stream flows within the Basin, including work to improve the use of water by irrigation districts. More recently, WaterWatch has included restoration of stream flows and protection and restoration of habitat for the spotted frog as part of its work in the Upper Deschutes River Basin. WaterWatch has been a member of various working groups in the Basin for the last decade, attempting to restore flows adequate for fish, frogs, and habitat. WaterWatch has members in Oregon, including members in the Deschutes River watershed. WaterWatch members participate in recreational activities such as hiking, backpacking, fishing, wildlife-viewing, and river and lake boating and kayaking throughout Oregon, and own businesses in the region dependent upon the river.

2. The U.S. Bureau of Reclamation is an agency of the federal government within the U.S. Department of Interior. BOR owns and operates the Crane Prairie and Wickiup dams, and originally the Crescent Lake Dam, that are the subject of this action. BOR’s office which is responsible for the Upper Deschutes River and dams is located at 1917 Marsh road, Yakima, Washington 98901-2058.

3. The Central Oregon Irrigation District is a commercial irrigation district organized under the laws of Oregon. COID operates the Crane Prairie Dam for the purposes of

supplying irrigation water to members of COID in and around areas east of Bend and around Redmond. COID's offices are located at 1055 SW Lake Court, Redmond, Oregon 97756.

4. The North Unit Irrigation District is a commercial irrigation district organized under the laws of Oregon. NUID operates the Wickiup Dam for the purposes of supplying irrigation water to members of NUID in and around the area of Madras, Oregon. NUID's offices are located at 2024 NW Beech Street, Madras, Oregon 97741.

5. Tumalo Irrigation District is a commercial irrigation district organized under the laws of Oregon. TID operates and owns the Crescent Lake Dam for the purposes of supplying irrigation water to members of TID in and around an area northwest of Bend. TID's offices are located at 64697 Cook Avenue, Bend, Oregon 97703.

BACKGROUND

OREGON SPOTTED FROGS

1. The Oregon spotted frog is listed as a threatened species under the Endangered Species Act. 50 C.F.R. 17.11(h). The spotted frog was first proposed for listing in August of 2013, 78 Fed. Reg. 53,582 (Aug. 29, 2013), and listed as threatened in August of 2014. 79 Fed. Reg. 51,658 (Aug. 29, 2014).

2. U.S. Fish and Wildlife Service listed the Oregon spotted frog as threatened due to the following factors: (1) habitat necessary to support all life stages continues to be affected or destroyed by human activities that cause loss of wetlands, including hydrologic changes resulting from operation of existing water diversions/manipulation structures; (2) predation by non-native species; (3) inadequate regulatory mechanisms that result in significant negative impacts such as habitat loss and modifications; and (4) small and isolated breeding locations, low connectivity, low genetic diversity within occupied sub-basins, and high genetic

differentiation between sub-basins.

3. Oregon spotted frogs are the most aquatic of native frog species in the Pacific Northwest, requiring water-based habitats for all life stages. Spotted frogs require shallow water areas for egg and tadpole survival at particular times of year. Adult frogs and juvenile frogs require perennially deep, moderately vegetated pools for survival in the dry season and perennial water with adequate depth for protecting all age classes during cold, wet weather. Spotted frogs are generally found in or near perennial bodies of waters such as springs, ponds, lakes, sluggish streams, or wetlands which have the characteristics described above to protect various life stages. Spotted frogs breed in shallow pools that are near flowing water or connected to larger bodies of water with moderate vegetation. Overwintering sites are associated with flowing systems that provide well-oxygenated water and sheltering locations protected from freezing.

4. Oregon spotted frogs are particularly affected by changes in hydrologic habitat, in part because they have very specific and unique egg-laying habits. *Id.* at 51,668. The frogs often lay eggs communally at the same locations they have always historically used. *Id.* at 51,660. These locations tend to be shallow pools exposed to sun, which makes the eggs especially vulnerable to desiccation and freezing if water levels drop, but also vulnerable to inundation and flushing if water levels rise too much and at the wrong time. *Id.* Egg-laying occurs from February to early June depending on the altitude of the site. *Id.* After hatching, the frogs require perennially deep pools and creeks during the summer, and well-oxygenated water during winter. *Id.* at 51,661. When the frogs hibernate under shallow water that freezes solid during the winter, their likelihood of surviving decreases.

UPPER DESCHUTES BASIN

5. The Deschutes River (including the Little Deschutes tributary) is located in

Central Oregon, arising in the Cascades and flowing north to the Columbia River. The Upper Deschutes River is the portion of the river above Bend, Oregon and it is protected as a “Wild and Scenic River” under federal law and as a designated state scenic waterway under Oregon law. The Upper Deschutes Basin includes the Upper Deschutes River and the Little Deschutes tributary (which also includes Crescent Creek.)

6. Due to the geology of the region, the hydrology of the Upper Deschutes River is dominated by groundwater (as opposed to seasonal runoff from snowmelt) and in its natural condition flows were relatively stable throughout the year. Prior to construction of Wickiup Dam, the Deschutes River had stable flows of about 730 cubic feet per second (cfs) in summer and 660 cfs in winter.

7. Crescent Creek is a tributary to the Upper Deschutes River arising in the Cascades at Crescent Lake, flowing to the Little Deschutes River and from there to the Deschutes River. Historically, the Little Deschutes River had “consistent flows” as well, with the characteristics of glacial canyon and moraine. It supports unique riparian wetlands and important habitat not found in other parts of the Deschutes Basin. Sections of the Little Deschutes River are also protected as “Wild and Scenic” under federal law.

8. The Upper Deschutes River Basin, including Crescent Creek, is habitat for a variety of fish and amphibians, including Oregon spotted frogs. It is estimated that there are approximately 3,530 breeding adult frogs in the Upper Deschutes Basin. *Id.* at 51,666. The spotted frog is known to breed in at least five areas along the Deschutes River below Wickiup Reservoir: Dead Slough, La Pine State Park, Sunriver, Slough Camp, and Old Mill casting pond, *id.* at 51,670, although recent surveys have also found breeding sites in Hosmer Lake, Lava Lake, Little Lava Lake, Winopee Lake, Muskrat Lake, Little Cultus Lake, Crane Prairie

Reservoir and its associated wetlands, and Wickiup Reservoir.

9. In addition to these Upper Deschutes sub-basin habitats, at least 6,628 individuals are present in the Little Deschutes sub-basin according to and at the time of the listing decision. 79 Fed. Reg. at 51,666. The frog has known habitat below the Crescent Lake Dam, along Crescent Creek and the Little Deschutes River. *Id.* at 51,670.

10. There are twenty-three known breeding sites within five watersheds in the Little Deschutes sub-basin alone: Upper, Middle, and Lower Little Deschutes River; Crescent Creek; and Long Prairie. *Id.* at 51,666.

11. The U.S. Fish and Wildlife Services (“USFWS”) has proposed critical habitat for the spotted frog that includes the Upper Deschutes Basin (both above and below Wickiup Dam and Reservoir) and Little Deschutes Basin, 78 Fed. Reg. 53,538 (August 29, 2013). The Little Deschutes unit includes Crescent Creek. 78 Fed. Reg. at 53,549.

UPPER DESCHUTES BASIN DAMS

12. Crane Prairie Dam is a dam (and reservoir) in the Upper Deschutes Basin, constructed in 1940 for the purpose of supplying irrigation water for the COID. Crane Prairie Reservoir can hold 55,000 acre-feet of water. Crane Prairie Dam is owned by BOR and operated by COID and BOR.

13. Wickiup Dam is a dam (and reservoir) in the Upper Deschutes Basin, constructed in 1949 for the purpose of supplying irrigation water for the NUID. The reservoir behind the dam can hold up to 200,000 acre-feet of water. Wickiup Dam is owned by BOR and operated by NUID and BOR.

14. Crane Prairie and Wickiup, managed together, store up to 255,000 acre-feet of water in winter and then release flows in spring, summer and early fall for irrigation purposes.

15. Crescent Lake Dam is a dam (and reservoir) in the Upper Deschutes Basin on Crescent Creek, constructed in 1956 for the purpose of supplying irrigation water for the TID. The reservoir can hold 86,000 acre feet. Crescent Lake Dam is owned and operated by TID.

16. The Defendants operate the dams to maximize water storage in the non-irrigation season and to maximize water delivery during the irrigation season. The non-irrigation season spans approximately October to April each year. Defendants operate the dams by severely limiting flows below the dams starting in October, with the result that flows drop off quickly below the dams, reaching and remaining at very low levels throughout the winter months.

17. Water storage in the reservoirs during winter and water releases in spring and summer result in extremely low winter flows of about only 20-30 cfs and high summer flows of about 1400 cfs.

HARM TO OREGON SPOTTED FROGS

18. Spotted frog populations have declined precipitously with only a few, severely decimated populations throughout the Pacific Northwest, one of which is in the Upper Deschutes River Basin. Habitat degradation, including changes in hydrologic habitats due to flow alteration and manipulation, has been a major factor in the decline.

19. In proposing to list the spotted frog as threatened under the ESA, the USFWS specifically found that threats to the species include “changes in hydrology due to construction of dams and human-related alterations to seasonal flooding,” and that “damming and diverting water for irrigation needs has resulted in the loss of wetlands within the Upper Deschutes.” 79 Fed. Reg. at 51,668. USFWS also identified “[c]hanging water levels at critical periods in the Oregon spotted frog’s life cycle” as a threat, including significant draw downs, but the USFWS found that seasonal flooding has negatively affected breeding and reproduction as well. 79 Fed.

Reg. at 51,669. USFWS also found that operation of dams in the Deschutes basin results in extreme water fluctuations which inundate and desiccate spotted frog habitat. *Id.*

20. USFWS also found that the system of dam operations increased or at least maintained conditions favoring species that prey on spotted frogs, and that dam operations can force spotted frogs into habitats with a larger concentration of predators. *Id.*

21. In particular, the breeding habitats in the Upper Deschutes may not have enough water to support successful breeding in the spring due to artificial delays in the onset of summer flows, and the sudden, severe drops in water levels in October also may leave frogs stranded and reduce overwintering habitat. *Id.*

22. Egg mass strandings have been documented along the Little Deschutes prior to the annual release of irrigation water each June, and winter habitat is reduced by the low flows when the water from Crescent Lake is cut off each October during water storage operations. *Id.* at 51,670. Similarly, wildlife agencies have documented egg stranding and desiccation at breeding sites, as well as elimination of breeding sites at Slough Basin, within the Upper Deschutes Basin as recently as spring 2013, 2014 and 2015.

23. Oxbows and sloughs are cut off or dried out with the fall reduction in flows, leaving juvenile frogs stranded and vulnerable to freezing. Photographic evidence shows severely curtailed and/or low flows in the Upper Deschutes Basin during October 2015, and Plaintiff has documented juvenile frogs stranded in cut-off oxbows and sloughs in the Little Deschutes sub-basin in October of 2015 where they are unlikely to survive.

24. Some frog habitat is cut off because operation of the dams moves sediment in ways that alters natural flows and morphology throughout the basin, creating sandbars and sediment deposits that inhibit flow of water into frog habitat and inhibit the movement of frogs

when conditions change.

25. In 2015, more than 90% (possibly as high as 99%) of habitat used by the frogs during the irrigation season was rendered dry and unusable by mid-October due to operation of the dams leaving much lower water levels only in the main channels.

26. In general, continued operation of the dams in the manner in which they have been operating in the last several years (or more) will continue to cause harm to spotted frogs, including, but not limited to, causing:

- water levels too low to inundate breeding habitat leading to loss of recruitment for the entire breeding seasons;
- water levels too low to inundate breeding habitat during the right time of year resulting in delayed breeding and delayed metamorphosis which leads, in turn, to fewer and smaller juveniles less able to survive winter;
- water levels raised in reservoirs in the middle of breeding season flushing egg masses out of breeding and rearing habitat into open water causing mortality;
- water levels to drop too rapidly in rearing habitat near and at the end of irrigation season to allow tadpoles and juveniles to follow aquatic pathways to permanent water, stranding them and causing increased mortality;
- variable flow rates during winter drawdown months when frogs are significantly less mobile, forcing spotted frogs to move around in main channels to access cover and likely increasing mortality;
- nearly complete dewatering during October-March low flow periods of a complex mosaic of aquatic habitat types; and
- extreme fluctuations in flows altering channel morphology, including loss of

sinuosity, lost debris structure, flattening, and destabilization of bank vegetation.

These effects in turn lead to accelerated outside bank erosion and point bar deposition, filling in and cutting off emergent wetlands along the channel's edge.

1. The conditions and threats described in the preceding paragraphs demonstrate that operation of the Crane Prairie, Wickiup and Crescent Lake dams has been, is, and continues to be harming Oregon spotted frogs by injuring and/or killing Oregon spotted frogs.

CONSULTATION UNDER THE ESA

2. BOR has failed to consult with USFWS regarding BOR's ownership and/or operation of the Crane Prairie and Wickiup dams to ensure operation of the dams does not jeopardize spotted frogs.

3. BOR previously consulted with USFWS and NOAA Fisheries over the effect of the general operations of Crane Prairie and Wickiup dams on ESA-listed species.

4. BOR's biological assessment associated with the previous consultation from September 2003 describes the "Proposed Action" to be assessed as follows: "the continued operation and maintenance of Reclamation's project facilities throughout the Deschutes River basin as described in Chapter 2. Subsequent consultations will be initiated if significant changes are anticipated in future project O&M [operations and maintenance] procedures, additional listings of species occur within the Deschutes River basin potentially affected by O&M activities, or other criteria described in 50 CFR 402.16 apply."

5. Chapter two of BOR's biological assessment stated that the consultation "involves O&M activities associated with those facilities for which Reclamation has authority to operate, largely defined by Reclamation ownership. Storage, diversion, and delivery facilities

comprising the proposed action include . . . Crane Prairie Dam and Reservoir [and] Wickiup Dam and Reservoir” among other facilities.

6. The assessment analyzed the hydrologic effects of BOR’s project operations on a variety of ESA-listed species by comparing water flows from the current operations with water flows that would occur without BOR facilities operating – i.e., if the reservoirs were run-of-the-river and just passed natural flows. The analysis did not cover the Oregon spotted frog because that species had not yet been listed as threatened.

7. It has been more than fourteen months since the frog was listed as threatened and BOR has not completed consultation over this species through either reinitiation of the prior consultation (as it noted it must if a new species was listed that may be affected by the proposed action) or a new consultation, but it continues its operation and maintenance of Crane Prairie and Wickiup dams and reservoirs, and that operation continues to harm spotted frogs.

8. BOR has recently requested reinitiation of consultation with the USFWS, but not on their ownership and/or operation of the dams. Rather, BOR appears to have requested consultation only on a narrow proposal by the COID, NUID, and TID to minimally alter operation of the system.

CAUSES OF ACTION COUNT I

1. WaterWatch realleges all preceding paragraphs, and further alleges:

2. The ESA prohibits any person from “taking” an endangered species. 16 U.S.C. § 1538(a)(1)(B). The ESA defines “take” as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct.” 16 U.S.C. § 1532(19).

3. By regulation, USFWS has defined “harm” to include:

. . . significant habitat modification or degradation which actually kills or injures

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fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding or sheltering.

50 C.F.R. § 17.3. “Harassment” includes unintentional acts that make it more difficult for an endangered species to breed, feed, shelter, reproduce or raise its offspring. H.R. Rep. No. 412, 93rd Cong. 1st Sess. at 11 (1973); 50 C.F.R. § 17.3.

4. “Harm” also includes failure to act where a person has a duty to do so in order to avoid or prevent the harm. *See* Fish and Wildlife Serv., Endangered and Threatened Wildlife and Plants; Final Redefinition of “Harm,” 46 Fed. Reg. 54,748, 54,750 (Nov. 4, 1981) (stating in response to comments that “the Service feels that ‘act’ [in the definition of ‘harm’] is inclusive of either commissions or omissions which would be prohibited by section 9”).

5. Under Section 4(d) of the ESA, 16 U.S.C. § 1533(d), USFWS has the authority to issue regulations extending the take prohibition to threatened species. USFWS has adopted a regulation pursuant to Section 4(d) making the take prohibition applicable to Oregon spotted frogs. 50 C.F.R. § 17.31(a); *see also* 79 Fed. Reg. at 51,708. Under 16 U.S.C. § 1538(a)(1)(G), it is unlawful to take threatened spotted frogs in violation of the Section 4(d) regulation.

6. The ESA take prohibition applies to all “persons.” 16 U.S.C. § 1538(a)(1). The ESA defines a “person” to include an individual, corporation, partnership, trust, association or any other private entity, or any officer, employee, agent, department, or instrumentality of the federal government, state, political subdivision of a state or any other entity subject to the jurisdiction of the United States. 16 U.S.C. § 1532(13). The Defendants in this case are “persons” as defined by the ESA.

7. The ESA citizen suit provision authorizes suits to enforce the ESA and its implementing regulations against any person who is alleged to be in violation of any provision of the ESA or regulations implementing the ESA. 16 U.S.C. § 1540(g).

8. Defendants, as the owners and/or operators of Crane Prairie, Wickiup and Crescent Lake dams, have violated and continue to violate the take prohibitions in Section 9 of the ESA by operating the dams in a manner that alters natural flows in the Upper Deschutes River Basin, including Crescent Creek, and doing so in a manner that has caused and continues to cause harm, harassment, injury and death to Oregon spotted frogs.

9. Defendants, as the owners and/or operators of Crane Prairie, Wickiup and Crescent Lake dams, have violated and continue to violate the take prohibitions in Section 9 of the ESA by operating the dams in a manner that creates extreme changes in flow and corresponding inundation and/or desiccation of frog habitat in a manner that has caused and continues to cause harm, harassment, injury and death to Oregon spotted frogs.

10. Defendants' operations of the Crane Prairie, Wickiup, and Crescent Lake dams is the proximate cause of unlawful take of Oregon spotted frogs.

11. Defendants are liable for the unlawful take of Oregon spotted frogs in the Upper Deschutes River Basin and Plaintiff is entitled to declaratory and injunctive relief requiring Defendants to operate the dams to ensure Oregon spotted frogs are not harmed by ensuring adequate, stable, and consistent water flows for all frog life stages.

12. Under 16 U.S.C. § 1540(g)(4), Defendants are liable to WaterWatch for WaterWatch's costs of litigation, including reasonable attorney and expert witness fees, where the court determines such recovery is appropriate.

COUNT II

1. WaterWatch realleges paragraphs 1-47 and 59, and further alleges:

2. The ESA requires consultation by any federal agency such as BOR with the USFWS regarding any action authorized, funded, or carried out by BOR to ensure that such

action is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat of such species. 16 U.S.C. § 1536(a)(2).

3. ESA regulations define “jeopardize the continued existence of” as “to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.” 50 C.F.R. § 402.02.

4. These regulations also define “destruction or adverse modification of critical habitat” as “a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.” *Id.*

5. In addition to the substantive duty under ESA Section 7 to avoid jeopardizing a species or adversely modifying critical habitat, action agencies also have a duty, while the consultation process is occurring, to avoid making any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures that would avoid jeopardizing the species or adversely modifying critical habitat. 16 U.S.C. § 1536(d).

6. BOR is in violation of 16 U.S.C. § 1536(a)(2) for failing to initiate and complete consultation as directed by the ESA and applicable regulation and for continuing to commit resources to operation of the dams that are harming frogs.

7. Plaintiff is entitled to declaratory and injunctive relief requiring BOR to complete consultation and to operate the dams in the interim to ensure spotted frogs are not harmed by

ensuring adequate, stable, and consistent water flows for all frog life stages.

8. Under 16 U.S.C. § 1540(g)(4), Defendants are liable to WaterWatch for WaterWatch's costs of litigation, including reasonable attorney and expert witness fees, where the court determines such recovery is appropriate.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests an order from this Court:

A. Declaring that Defendants have each violated and continue to violate 50 C.F.R. § 17.21 and the Endangered Species Act, 16 U.S.C. § 1538(a)(1)(G), and 1538(1)(B) in their operations of the Crane Prairie, Wickiup, and Crescent Lake dams;

B. Enjoining Defendants from continuing to operate Crane Prairie, Wickiup, and Crescent Lake dams in a manner that violates Section 9 of the Endangered Species Act, 16 U.S.C. § 1538(a)(1)(G), and 1538(1)(B), and requiring consistent, stable, and adequate flows and habitat inundation for Oregon spotted frogs at all life stages;

C. Declaring that BOR has violated and is in violation of the Endangered Species Act, 16 U.S.C. § 1536(a)(2), by failing to complete consultation with USFWS regarding operation of the Crane Prairie and Wickiup dams to ensure operation of the dams does not jeopardize Oregon spotted frogs and/or does not result in destruction or adverse modification of critical habitat;

D. Enjoining BOR from continuing to operate Crane Prairie and Wickiup dams until BOR completes consultation under 16 U.S.C. § 1536(a)(2) and applicable regulation;

E. Awarding Plaintiff its costs and attorneys' fees pursuant to 16 U.S.C. § 1540(g)(4); and

F. Granting such other and further relief as the court deems just and equitable.

Respectfully submitted this 11th day of January, 2016.

/s/ Karl G. Anuta

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